

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**MARC WEILL, TOM GROOS
AND JOSH COHEN,**

Plaintiffs,

- against -

**NOTICE OF MOTION TO
DISMISS COMPLAINT OR
TRANSFER VENUE**

07 CV 6246 (BSJ)

EARTH BIOFUELS, INC.,

Defendant.

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PLEASE TAKE NOTICE, that Defendant Earth Biofuels, Inc. ("Earth"), by its attorneys, Cuddy & Feder LLP, will respectfully move this Court before the Hon. Barbara S. Jones, United States District Court Judge for the Southern District of New York, located at 500 Pearl Street, New York, New York 10007, on a return date and time to be determined by the Court, for an Order (a) dismissing the Complaint pursuant to FRCP § 12(b)(3), on the ground that the Southern District of New York is an improper venue or, alternatively, (b) transferring this case to the United States District Court for the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. § 1404(a), on the ground that the United States District Court for the Northern District of Texas, Dallas Division, is the contractually agreed upon exclusive venue for this dispute and, alternatively, on the ground that the convenience of the parties and the witnesses, and the interest of justice, make the Northern District of Texas the proper venue for this action, and granting Earth such other relief as to the Court may seem just and proper, including but not limited to, attorney's fees, costs and expenses.

This motion is based upon the annexed Affidavit of Dennis G. McLaughlin, III, duly sworn

to on the 18th day of December, 2007, together with the exhibits annexed thereto, and upon the accompanying Memorandum of Law in support of this Motion, dated December 21, 2007.

Dated: December 21, 2007
White Plains, New York

Respectfully Submitted,

**CUDDY &
FEDER** ^{LLP}

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